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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/786,988	01/23/1997	DANIEL P. LITTLE	24736-2001D	5922

20985 7590 09/21/2004

FISH & RICHARDSON, PC  
12390 EL CAMINO REAL  
SAN DIEGO, CA 92130-2081

EXAMINER
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GAKH, YELENA G

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

08/786,988

Applicant(s)

LITTLE ET AL.

Examiner

Yelena G. Gakh, Ph.D.

Art Unit

1743

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 September 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-6,9-34,40-51,54-61,63-72,78,82-94 and 102-107.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
Yelena G. Gakh, Ph.D.

The amendment filed 09/08/04 corrects minor typos and does not overcome the rejections established in the previous Office actions. All rejections remain. In response to the Applicant's remarks regarding citation from Zhang, the examiner made an obvious mistake when recited the Applicant's specification, rather than Zhang's disclosure, which is absolutely clear from the rejections; the following recitation is repeated from the Office action: Zhang teaches: "the eluate was spotted onto a multi-well sample holder with a volume of about 5 nL per fraction". The examiner interprets this as spotting fractions of ~5 nL into an array of wells. The Applicant did not come up with any different interpretation of this statement. The Applicant's arguments are not persuasive. Zhang specifically teaches reproducibility of the results. Assuming that Zhang teaches contacting vesicle with the substrate to deposit the fraction of the eluate means to assume that he intentionally contaminates vesicle, which can hardly lead to reproducible results. This is obvious not only to any routineer of the art, but to any common person.

The newly filed IDS is not considered as it was not filed properly in a timely manner. Objections to the overwhelming IDS remain.